

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

20 CR 351 (SHS)

5 INIGO PHILLBRICK,

6 Defendant.

Conference

7 -----x  
8 New York, N.Y.  
9 July 29, 2020  
10:00 a.m.

10 Before:

11 HON. SIDNEY H. STEIN,

12 District Judge

13 APPEARANCES

14 AUDREY STRAUSS

15 Acting United States Attorney for the  
Southern District of New York

16 BY: CECELIA VOGEL

Assistant United States Attorney

17 BRILL LEGAL GROUP

18 Attorneys for Defendant

19 BY: PETER E. BRILL  
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1 (Case called)

2 THE COURT: Good morning this is Judge Stein. This is  
3 a case against Inigo Philbrick. Because everyone is remote  
4 here, I'm going to ask that everyone speak loudly, slowly, and  
5 clearly. Pause after you're done so that I can respond. If  
6 I'm asking a question, I'll pause.

7 I'd like counsel to make their appearances, please.  
8 For the government.

9 MS. VOGEL: Good morning, your Honor. Cecilia Vogel  
10 for the government on the line.

11 THE COURT: Good morning.

12 For the defendant, Mr. Philbrick.

13 MR. BRILL: Peter Brill on behalf of Mr. Philbrick.  
14 Good morning, your Honor.

15 THE COURT: Good morning.

16 Now, I have Mr. Brill's letter. What he's saying --  
17 and I've read it, Mr. Brill, obviously. Let me just say that  
18 it's important that we had honor all of the precautions that  
19 have been put into place by the BOP to prevent the spread of  
20 COVID.

21 One of the points in your letter is that you seem to  
22 be objecting to quarantine because your client has come from  
23 other places and has been tested. Well, the fact that he's  
24 come from other places -- including Guam, Hawaii, Nevada, and  
25 Oklahoma -- certainly increases the importance of his being

1 tested and quarantined when he arrives at a new place.

2 But whatever the BOP procedures are for preventing the  
3 spread of COVID, it seems to me I'd be inclined not to overrule  
4 them. You seem to be concerned that he's in quarantine.

5 Let me repeat before I give you an opportunity to  
6 respond. The COVID protocol is that when somebody comes into  
7 the facility, he or she is quarantined.

8 THE COURT: Mr. Brill, what can I do for you, sir?

9 MR. BRILL: Thank you, your Honor.

10 Most of the information that I provided to the Court  
11 was by way of background, A, other than the fact that  
12 Mr. Philbrick had been at the MCC for almost two weeks and BOP,  
13 for no apparent reason, moved him to the MDC; and B, initiated  
14 another quarantine period.

15 What they're telling him is it will be three weeks.  
16 Again, it was strange he was moved. No one knows why he was  
17 moved. And then it was just odd again that there's a  
18 quarantine period.

19 I'm not disagreeing with your Honor that a quarantine  
20 is appropriate for peopling coming into a new facility. I just  
21 found it a little bit odd in these circumstances.

22 THE COURT: Mr. Brill, what can I do to help you, sir?

23 MR. BRILL: I would just like to figure out a way  
24 where I can have an actual privileged conversation with  
25 Mr. Philbrick where he's not yelling in the hallway in the SHU

1 on the phone before another three weeks have elapsed.

2 THE COURT: It seems to me that your client is  
3 entitled to have a privileged conversation with his lawyer.  
4 Now, I must say that there have been difficulties in a number  
5 of cases with people getting access to phones and so forth.  
6 That's certainly even truer I think if somebody is in  
7 quarantine. But, yes. It's important that he have the ability  
8 to speak with his counsel.

9 As I understand your letter, you're saying that when  
10 he is in quarantine, there's no ability to speak privately with  
11 you.

12 Is that true?

13 MR. BRILL: Based upon Mr. Philbrick's description of  
14 how these last two calls have taken place, that is true, your  
15 Honor.

16 THE COURT: Ms. Vogel, what do you say?

17 It seems to me that you will agree that somebody in a  
18 detention facility is entitled to have an attorney-client  
19 confidential call.

20 So what can you tell me?

21 MS. VOGEL: Yes. I certainly agree with that, but I  
22 have spoken with both the MCC and the MDC this morning and  
23 gotten some information that I think will be helpful in  
24 informing everyone as to what's going on here.

25 First, just to go back to Mr. Philbrick's time at the

1 MCC with respect to the call, the video call that had been  
2 scheduled on July 20, BOP has represented to me that it appears  
3 as a mistake by Federal Defenders who were coordinate these  
4 calls.

5 Mr. Philbrick was accidentally left on the list of  
6 defendants to have calls that day, and they were unable to  
7 accommodate the call, given that he was not on the list.

8 Second, Mr. Philbrick was moved from MCC to MDC  
9 because of a bed space shortage at MCC. My understanding is  
10 that MCC has not been taking new inmates for a couple of weeks  
11 now because they have been completely full.

12 So for that reason, some inmates -- I don't know how  
13 many -- were moved. And that is the reason for Mr. Philbrick's  
14 move to MDC. It was a space issue at MCC.

15 Mr. Philbrick is currently in isolation because BOP  
16 believes he's been exposed to someone who's tested positive.  
17 So they have tested him again and are keeping him in isolation  
18 until they get that test result.

19 My understanding from the facility is that currently  
20 test results are coming in within about two to six days of  
21 being tested. And that, yes. Regardless, Mr. Philbrick, being  
22 transferred from MCC to MDC, would have to do 14 days of  
23 quarantine because he's moving between facilities and that all  
24 inmates going through that quarantine process are tested on the  
25 14th day just to ensure, before they're transferred out of

1 quarantine, that they are testing negative.

2 Just to be clear, Mr. Philbrick is not showing any  
3 symptoms, but in an abundance of caution, they are testing him  
4 because they believe he's been exposed. They are keeping him  
5 isolated for that reason.

6 In speaking with the facility, my understanding is  
7 that they are not able in this isolation unit to provide the  
8 VTC. It's not possible, given the setup of the unit, and that  
9 currently the phone calls, the one call, as he's done, is the  
10 way that they're able to provide calls is my understanding just  
11 because he's in the isolation unit.

12 THE COURT: So what you're saying is the isolation  
13 unit is the same as quarantine? Is that it?

14 MS. VOGEL: I believe, your Honor, that it's slightly  
15 more restrictive. I'm not sure that with quarantine they're  
16 quite as isolated as in -- I believe the isolation unit is for  
17 individuals who are symptomatic or who may have been exposed to  
18 someone.

19 So they keep them really more separate from everyone  
20 else is my understanding, and that quarantine is somewhat less  
21 restricted. I believe the quarantine is more in a pod is my  
22 understanding, while isolation is more you're on your own  
23 individually.

24 THE COURT: So if I understand you, he is currently  
25 being isolated because they believe he was exposed to someone

1 who was positive. I have no problem with that, assuming that's  
2 the case. And that will be for 14 days.

3 Do you know when that's up by any chance?

4 MS. VOGEL: I believe it is counting from the Friday  
5 when he was moved, the last Friday. So even if he tests  
6 negative now in isolation, he will have to finish the 14-day  
7 quarantine period, which looks like it should end on the 7th.

8 On that 14th day, he will be tested again. And  
9 assuming that test comes back negative, he would then be  
10 released from quarantine. That's the protocol that BOP is  
11 following.

12 THE COURT: Thank you.

13 Then when he is released from quarantine, he's able to  
14 have a private phone call.

15 Is that it?

16 MS. VOGEL: That's my understanding. Or whatever  
17 process they've been using. I don't exactly know the setup.  
18 But to the extent that Mr. Philbrick had calls with defense  
19 counsel prior to this, it would be under that same format. It  
20 would be a video call with attorneys, how they set that up.

21 THE COURT: While he is in isolation, you're saying  
22 there is no way to have a private phone call?

23 MS. VOGEL: I haven't asked BOP that specifically, but  
24 my understanding is that he is, we think, isolated and that  
25 they're able to I think provide access to his cell, other than

1 currently doing it as defense counsel described.

2 THE COURT: All right. Well, this is what I propose.  
3 Again, these protocols, by and large, are for the health of the  
4 inmates under these conditions of the pandemic.

5 What I'd like you to do, Ms. Vogel, is double-check  
6 with the BOP to see if there is any way he can have a private  
7 call with his attorney while he's in isolation.

8 If not, I want you to make sure that he has the  
9 ability to have a private call with his attorney when he's  
10 released from isolation and quarantine, which as of now should  
11 be about August 7.

12 Mr. Brill, it looks actually that you've had an  
13 opportunity to speak privately with your client -- you say that  
14 in your letter as he was being moved about the country.

15 I don't want to interfere here. I want to expedite  
16 things. But, Mr. Brill, it looks and sounds as if there's a  
17 system whereby if you work through the Federal Defenders,  
18 you're able to set up calls.

19 So what I'm saying is I don't want to set up a  
20 parallel system that will mess up the bureaucracy.

21 Speak to me, Mr. Brill.

22 MR. BRILL: That part was technically working fine  
23 until the two longer calls, longer video calls that we had set  
24 up were both canceled by one side or the other. I don't think  
25 we need to ascribe blame.



1           The letter was for two purposes: The first one we've  
2 addressed which is there is no way to do anything for the next  
3 couple of weeks give or take. The second was just more  
4 general, to give the Court an understanding of what is going on  
5 with this case so that at our initial conference, whenever that  
6 is at this point, you'll have some context for where we stand.  
7 Thank you, your Honor.

8           THE COURT: I would appreciate it, under the  
9 circumstances is of the pandemic, Mr. Brill, if you seek the  
10 Court's assistance for a specific issue rather than wanting to  
11 give me background on what's been happening.

12           MR. BRILL: I'm sorry, your Honor.

13           THE COURT: Let me just continue.

14           As you know, again, under these conditions, there has  
15 to be some significant advance notice in order for the BOP to  
16 set up a call. And my deputy has attempted to set up a call  
17 for August 7. It awaits verification from the BOP -- I'm  
18 sorry. August 11. It awaits verification from the BOP.

19           It seems to me if the likelihood that he's not going  
20 to be able to speak to you privately until the 8th at the  
21 earliest, that it doesn't make that much sense for us to have  
22 our initial pretrial conference with the defendant on the 11th.

23           You actual me, Mr. Brill. But it seems to me, given  
24 your desire to speak at length with him, because you talk about  
25 that in your July 28 letter, how nothing is to be gained by

1 setting it on August 11.

2 I want to move this case forward. We should. But  
3 also you need to have the opportunity to speak with your client  
4 as you say here that you want to do it.

5 So you tell me. When do you want to have a conference  
6 in this case, sir?

7 MR. BRILL: Yes, your Honor. Just very briefly to  
8 clarify the point of the letter was exactly that. I did want  
9 some help, if possible, in being able to speak to him sooner  
10 three than later. But we've resolved that issue, and I  
11 understand where we stand.

12 If the Court would be so kind as to set it say for  
13 maybe the 20th instead of the 11th -- I know you can only do it  
14 on Tuesdays and Thursdays -- that might be better.

15 THE COURT: All right. Let me just speak to my deputy  
16 here because she has the schedule.

17 (Pause)

18 THE COURT: All right. My deputy will try to set it  
19 up for all 20. Apparently, there are only two time slots  
20 available. She'll notify you when she gets that available.  
21 August 20. I will tentatively set it for 10:00, but I'll sign  
22 an order once we get an actual time slot.

23 Mr. Brill, make sense?

24 MR. BRILL: Yes, your Honor.

25 THE COURT: Ms. Vogel, make sense?

1 MS. VOGEL: Yes. I will call BOP about private  
2 attorney calls and make sure to inform Mr. Brill.

3 THE COURT: All right. I think everybody is working  
4 in tandem here. We still have to stay conscious of the need to  
5 prevent the spread of the pandemic, and the defendant has the  
6 right obviously to speak with his attorney. I think we're all  
7 on the same page, and I appreciate everybody's cooperation.

8 Now, Mr. Brill, obviously your client is incarcerated.  
9 I take it you're waiving his appearance for purposes of this  
10 conference.

11 MR. BRILL: Yes. Thank you, your Honor.

12 THE COURT: All right. Fine. Let's meet again on  
13 August 20.

14 Is there anything, government?

15 MS. VOGEL: Your Honor, I think -- perhaps this would  
16 be an appropriate time to make this request. Currently time is  
17 excluded until I believe it is August 13. Given that our  
18 initial conference now is tentatively scheduled for August 20,  
19 I would request to exclude time until that conference date, the  
20 20th, given some of these delays related to COVID and to give  
21 counsel an opportunity to discuss the case at greater length  
22 with his client.

23 THE COURT: All right. Mr. Brill, what's the  
24 defense's response?

25 MR. BRILL: We have no objection, your Honor.

1 THE COURT: All right. The government having moved  
2 for the exclusion of time and the defense stating it has no  
3 objection to that exclusion, I deem the motion made by the  
4 government pursuant to 18 U.S. Code, Section 3161(h)(7)(A). I  
5 grant the motion. I do find that the ends of justice outweigh  
6 the interest of the public and the defendant in a speedy trial.

7 The purpose is to enable under these pandemic  
8 conditions for the defense to have time to speak with his  
9 client and, for that matter, for the government to begin or to  
10 continue fulfilling its discovery obligations.

11 This exclusion is from today until August 20.

12 All right. Thank you. I appreciate everyone's  
13 cooperation. The Court is leaving the call at this time.

14 (Adjourned)

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